

EXHIBIT E

commission junction

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF ORANGE
3 DEPARTMENT C-25
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5 COMMISSION JUNCTION, INC.,)
6 PLAINTIFF,)
7 VS.) CASE NO. 2008-101025
8 THUNDERWOOD HOLDINGS, INC.,)
9 DEFENDANT.)
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12 HONORABLE RANDELL W. WILKINSON, JUDGE PRESIDING
13 REPORTER'S TRANSCRIPT
14 OCTOBER 29, 2008
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18 APPEARANCES OF COUNSEL:
19 FOR THE PLAINTIFF: PHIL MONTOYA
20 ATTORNEY AT LAW
21 FOR THE DEFENDANT: LEO J. PRESIADO
22 ATTORNEY AT LAW
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24 ARLENE M. FERRARO, RPR, CSR #12035
25 OFFICIAL COURT REPORTER
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1 SANTA ANA, CALIFORNIA - WEDNESDAY, OCTOBER 29, 2008

commission junction
AFTERNOON SESSION

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(WHEREUPON, THE FOLLOWING PROCEEDINGS WERE HELD
IN OPEN COURT:)

THE COURT: TWO; COMMISSION JUNCTION VERSUS
THUNDERWOOD HOLDINGS.

MR. PRESIADO: GOOD AFTERNOON, YOUR HONOR, LEO
PRESIADO FOR THE MOVING PARTIES.

MR. MONTOYA: GOOD AFTERNOON, YOUR HONOR, PHIL
MONTOYA ON BEHALF OF THE PLAINTIFF COMMISSION
JUNCTION.

THE COURT: THE MOTION TO STAY DISCOVERY WILL BE
DENIED. THE COURT FINDS THAT THE CORPORATE DEFENDANT
HAS NO 5TH AMENDMENT RIGHT. IT WOULD HAVE TO BE
SUBJECT TO DISCOVERY DEMANDS WHETHER A CRIMINAL CASE
WERE PENDING OR NOT.

AS TO THE DEFENDANT BRIAN DUNNING, THERE IS NO
INDICATION OF HOW LONG THIS CRIMINAL INVESTIGATION CAN
LAST. AND MR. DUNNING CAN INVOKE HIS 5TH AMENDMENT
RIGHT IF HE FEELS HE NEEDS TO IN ANY EVENT. UP TO NOW
HE'S APPARENTLY BEEN WILLING TO PROVIDE DISCOVERY
WITHOUT INVOKING SUCH RIGHTS.

ACCORDINGLY, THE REQUEST TO ESSENTIALLY GRANT A

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LIMITED STAY AS TO DISCOVERY WOULD BE DENIED.

IS THERE ANYTHING MOVING PARTY WOULD LIKE TO
SAY?

MR. PRESIADO: YES, YOUR HONOR. I THINK I'LL
TAKE THOSE POINTS IN REVERSE.

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6 WITH RESPECT TO PARTICIPATING IN DISCOVERY,
7 MR. DUNNING HAS NOT -- THE DOCUMENTS ATTACHED, THE
8 RESPONSES ATTACHED TO THE OPPOSITION PAPERS ARE IN
9 FACT, OBJECTIONS AND BLANKET OBJECTIONS WHICH THERE
10 HAS BEEN NO MOTION TO COMPEL ON IT AND THAT DEADLINE
11 HAS PASSED.

12 WITH RESPECT TO THE DILEMMA HE FACES WITH
13 TESTIFYING IN THIS CASE, I'LL CUT TO THE CHASE AND
14 GIVE THE COURT AN EXAMPLE.

15 A DEFENSE AVAILABLE TO MR. DUNNING IN THIS
16 CASE IS THAT A PLAINTIFF AUTHORIZED HIS CONDUCT WITH
17 RESPECT TO WHAT PLAINTIFF CLAIMS IS A BREACH OF THE
18 CONTRACT WHICH IS AT ISSUE.

19 NOW, IF HE WERE TO TESTIFY AS TO THAT, THAT
20 MAY -- AND I DON'T THINK IT DOES, BUT IT MAY CREATE
21 CRIMINAL LIABILITY THROUGH AN AGENCY-TYPE ARGUMENT
22 THAT THE ATTORNEY GENERAL MAY PURSUE.

23 WITH RESPECT TO THERE BEING NO INDICATION OF
24 HOW LONG THIS INVESTIGATION IS GOING TO LAST THAT IS
25 BECAUSE DESPITE MANY ATTEMPTS BY CRIMINAL COUNSEL
26 MR. COPENNY AND HIS DECLARATION IS ATTACHED THE

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1 ATTORNEY GENERAL UP THERE WILL NOT INDICATE HOW LONG
2 THE INVESTIGATION WILL LAST.

3 I WOULD REQUEST WITH RESPECT TO THE
4 CORPORATION -- I UNDERSTAND THAT THE 5TH AMENDMENT
5 DOES NOT APPLY, BUT WITH RESPECT TO MR. DUNNING I
6 BELIEVE IT CERTAINLY DOES APPLY.

7 AND HE'S GOING TO BE FACED WITH THE DILEMMA OF
8 HAVING TO CHOOSE BETWEEN TESTIFYING TO A DEFENSE IN

9 commission junction
THIS CASE, THIS CIVIL CASE, AND POTENTIALLY EXPOSING
10 HIMSELF AND WAIVING HIS 5TH AMENDMENT RIGHT IN THE
11 INVESTIGATION WITH RESPECT TO THE CRIMINAL CASE. I
12 THINK THAT'S EXACTLY WHAT THE PACERS COURT PROTECTS
13 AGAINST.

14 I DON'T KNOW WHAT TO SAY WITH RESPECT TO HOW
15 LONG THE INVESTIGATION WILL BE PENDING. I DON'T KNOW
16 WHAT WE CAN DO OTHER THAN KEEP INQUIRING WITH THE
17 ATTORNEY GENERAL'S OFFICE UP THERE. BUT I'M SURE
18 THERE IS A WAY TO FASHION A REMEDY THAT PROTECTS MY
19 CLIENT'S 5TH AMENDMENT CONSTITUTIONAL RIGHTS.

20 THE COURT: WHY COULDN'T YOUR CLIENT JUST TAKE
21 THE 5TH AMENDMENT?

22 MR. PRESIADO: BECAUSE TO THE EXTENT HE TAKES
23 THE 5TH AMENDMENT, HE WOULD NOT BE ABLE TO TESTIFY TO
24 FACTS ESTABLISHING A DEFENSE IN THE CIVIL CASE
25 VIS-A-VIS THIS AGENCY DEFENSE.

26 THE COURT: BUT WHY SHOULD WE STOP DISCOVERY

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1 BECAUSE OF THAT? I WOULD THINK THEY MIGHT BE THE ONES
2 THAT WOULD BE DISADVANTAGED BY THE FACT THEY CAN'T,
3 FOR EXAMPLE, DEPOSE YOUR CLIENT OR GET DISCOVERY FROM
4 HIM.

5 MR. PRESIADO: THAT MAY OR MAY NOT BE THE CASE,
6 YOUR HONOR, BUT TO THE EXTENT THIS CASE GOES TO TRIAL
7 AND ALL MY CLIENT HAS DONE IS ASSERT HIS 5TH AMENDMENT
8 RIGHT IN THE DEPOSITIONS, HE CAN'T VERY WELL TESTIFY
9 IN HIS TRIAL TO WHAT HE REFUSED TO TESTIFY --

10 THE COURT: NOW, WAIT A MINUTE. WE'RE NOT HERE
11 TODAY FOR A PREVIOUS ORDER FOR A CONTINUANCE OF TRIAL
12 OR ANYTHING LIKE THAT. WE'RE HERE FOR A PROTECTIVE

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13 ORDER REGARDING DISCOVERY. THE TRIAL IS A DIFFERENT
14 ISSUE.

15 MR. PRESIADO: I UNDERSTAND, YOUR HONOR, BUT
16 I THINK THE PACERS COURT CONTEMPLATES AND I THINK
17 THERE'S EVEN SPECIFIC LANGUAGE IN THERE WITH RESPECT
18 TO WHAT'S GOING TO HAPPEN AT TRIAL AND HOW DISCOVERY
19 IS GOING TO IMPACT THAT, BOTH ON PLAINTIFF'S SIDE AND
20 ON THE DEFENDANT'S SIDE. SO I THINK THAT HAS TO BE AT
21 LEAST CONSIDERED.

22 WHAT WE'RE ASKING FOR HERE TODAY AND I'LL PUT
23 ASIDE THUNDERWOOD, WHAT WE'RE ASKING FOR HERE TODAY
24 IS THAT MY CLIENT, THE INDIVIDUAL BRIAN DUNNING, BE
25 PERMITTED -- THAT A STAY BE IN PLACE WITH RESPECT TO
26 HIM HAVING TO TESTIFY OR GIVE WRITTEN DISCOVERY

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1 RESPONSES UNTIL THERE'S SOME CLARITY WITH RESPECT TO
2 THE CRIMINAL CASE UP NORTH.

3 ONCE HE'S OUT OF THE WOODS, THEN THIS CASE CAN
4 PROCEED.

5 THE COURT: WELL, AS LONG AS HE'S GOT HIS 5TH
6 AMENDMENT THAT HE CAN ASSERT, WHY DOES HE NEED A STAY?
7 I'M JUST NOT SEEING IT.

8 IF I'M NOT SAYING TODAY OKAY, LISTEN, YOU'RE
9 GOING TO GO TO TRIAL. IT DOESN'T MAKE ANY DIFFERENCE
10 WHAT YOU TELL ME. IF I'M NOT SAYING THAT TODAY, THEN
11 AS LONG AS HE'S GOT HIS 5TH AMENDMENT RIGHT THAT HE
12 CAN ASSERT, WHAT'S THE DOWN SIDE TO ALLOWING DISCOVERY
13 TO GO FORWARD?

14 I'M JUST NOT SEEING IT.

15 MR. PRESIADO: IF THE COURT IS INDICATING THAT

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16 HE COULD ASSERT HIS 5TH AMENDMENT RIGHTS BUT STILL
17 BE ABLE TO ASSERT ALL DEFENSES EVENTUALLY AT TRIAL, IF
18 THIS DILEMMA IS MORE RIPE IN THE CONTEXT OF WHEN TRIAL
19 IS GOING TO GO FORWARD, I CAN UNDERSTAND THAT.

20 BUT I SAW THAT IT WAS RIPE TODAY BASED ON THE
21 PACERS CASE WHICH THE FACTS ARE ALMOST IDENTICAL ON.
22 AND THE COURT IN THE PACERS DID, IN FACT, ORDER A
23 STAY WITH RESPECT TO THE DISCOVERY AS TO THE
24 INDIVIDUAL DEFENDANT.

25 THE COURT: WELL, I'M NOT MAKING A DECISION
26 TODAY WITH RESPECT TO WHEN THIS CASE ABSOLUTELY HAS TO

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1 GO TO TRIAL; THAT'S NOT THE ISSUE THAT'S BEFORE ME
2 RIGHT NOW NOR ARE THERE ANY FACTS THAT REALLY SPEAK TO
3 THAT AT THIS POINT.

4 BUT I'M JUST FAILING TO SEE WHY DISCOVERY
5 COULDN'T BE CONDUCTED AT THIS POINT SO LONG AS
6 DEFENDANT HAS HIS 5TH AMENDMENT RIGHTS THAT HE CAN
7 ASSERT.

8 ANYTHING THAT THE PLAINTIFF WANTED TO SAY ON
9 THAT?

10 MR. MONTOYA: NO, YOUR HONOR, UNLESS YOU HAVE
11 SPECIFIC QUESTIONS ABOUT THE ISSUE.

12 THE COURT: I DON'T THINK SO. THE RULING WILL
13 STAND, COUNSEL. I'LL HAVE THE PLAINTIFF GIVE NOTICE.

14 MR. MONTOYA: THANK YOU, YOUR HONOR.

15 THE COURT: AND IF A PROBLEM COMES UP, THEN COME
16 BACK WITH ANOTHER MOTION. BUT RIGHT NOW I'M JUST NOT
17 SEEING THE PROBLEM AS LONG AS THE DEFENDANT CAN ASSERT
18 HIS 5TH AMENDMENT RIGHTS.

19 MR. PRESIADO: THANK YOU, YOUR HONOR.

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20 MR. MONTOYA: THANK YOU.

21 THE COURT: THANK YOU.

22 (PROCEEDINGS CONCLUDED.)

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1 STATE OF CALIFORNIA)
2 COUNTY OF ORANGE) SS.

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REPORTER'S CERTIFICATE

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8 I, ARLENE M. FERRARO, RPR, CSR NO. 12035,
9 COURT REPORTER IN AND FOR THE SUPERIOR COURT OF THE
10 STATE OF CALIFORNIA, COUNTY OF ORANGE, DO HEREBY
11 CERTIFY THAT THE FOREGOING TRANSCRIPT IS A TRUE AND
12 CORRECT TRANSCRIPT OF MY SHORTHAND NOTES AND A FULL,
13 TRUE AND CORRECT STATEMENT OF THE PROCEEDINGS HAD IN
14 SAID CAUSE.

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17 DATED THIS DAY OF , 2008.

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ARLENE M. FERRARO, RPR, CSR NO. 12035
OFFICIAL COURT REPORTER

ARLENE M. FERRARO, CSR NO. 12035, RPR
OFFICIAL COURT REPORTER
DEPARTMENT C-18
700 CIVIC CENTER DRIVE WEST
SANTA ANA, CALIFORNIA 92702

I N V O I C E

TO: RUS MILIBAND & SMITH

RE: COMMISSION JUNCTION, INC. VS.
THUNDERWOOD HOLDINGS, INC.
EXPEDITED TRANSCRIPT

DATE: OCTOBER 29, 2008
AFTERNOON SESSION

ORIGINAL AND COPY OF TRANSCRIPT \$40.00

PLEASE MAKE CHECK PAYABLE TO ABOVE-NAMED REPORTER.
AMOUNT DUE UPON RECEIPT.

THANK YOU!

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